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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/735,177	12/12/2000	David McCray Peele	628-318CT	7421

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EXAMINER

WALLS, DIONNE A

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 02/22/2002

3

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/735,177

Applicant(s)

PEELE, DAVID MCCRAY

Examiner

Dionne A. Walls

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 8-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

I. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-7, drawn to a method for modifying a tobacco curing barn, classified in class 131, subclass 299.

II. Claims 8-13, drawn to a method for curing tobacco, classified in class 131, subclass 299.

II. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as it involves a method that does not involve the removal of direct-fire heating units from a tobacco curing barn. See MPEP § 806.05(d).

III. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

IV. During a telephone conversation with Mr. Michael Sajovec on Friday, February 15th, 2002, a provisional election was made with traverse to prosecute the invention of I, claims 1-7. Affirmation of this election must be made by applicant in replying to this

Office action. Claims 8-13 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 103

V. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

VI. Claims 1, 3-5, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fowler (US. Pat. No. 4,206,554) in view of Bullock, Jr. (US. Pat. No. 5,018,281) and O'Donnell, Jr. et al (US. Pat. No. 5,803,081).

Fowler discloses a method for bulk curing of tobacco in an energy efficient manner, which consists of a curing barn 10 having chambers 21,22 for containing tobacco. Below the chambers are provided plenums 35,36 such that pressurized air from a common source 40 may be directed therethrough to cure the tobacco. The heat source may be electric (corresponding to the claimed "heating unit that does not provide

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contact of tobacco...with exhaust gases containing nitric oxide combustion products"/ "electrical heating unit") (col. 3, lines 21-49; col. 3, lines 47-48, see figs.). While Fowler does not disclose modifying an *existing* tobacco curing barn for the purpose of curing tobacco by its efficient electric method, Bulluck, Jr. discloses, in its "Background of the Invention" section, that there are tens of thousands of barns already existing on tobacco farms having means for curing tobacco using conventional means which are not particularly energy efficient. In view of the disclosure of Bulluck, Jr., with the cost of tobacco barns continuing to increase, one of ordinary skill in the art would understand the desirability of modifying existing barns over buying new ones (col. 1, lines 12-39, col. 2, lines 3-6, 47-50). Therefore, one of ordinary skill in the art would have been motivated to modify an existing tobacco barn such that it includes means for curing tobacco in accordance with the method disclosed in Fowler in order to enable struggling farmers to make efficient use of their energy dollar as taught in the background of Bulluck, Jr. (col. 2, lines 3-6). Further, while Fowler modified by Bulluck, Jr may not disclose the step of removing a direct-fired heating unit from a barn already equipped with such a unit, O'Donnell, Jr et al teaches that convection heating (corresponding to the claimed "electrical heating") is superior to conventional curing methods because it reduces or prevents the occurrence of nitrosamines in tobacco (col. 2, lines 32-34). This would suggest to one of ordinary skill to modify the process of Fowler modified by Bulluck, Jr. to include substituting the regular curing means (corresponding to the claimed "direct fire heating") in a tobacco barn, disabling it from use during curing, physically removing it from the barn, and replacing it with electrical heating means in

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order to be ensured of an improved tobacco product with virtually no carcinogenic potential as taught in O'Donnell, Jr. et al (col. 2, lines 35-37).

Regarding claim 5, it would follow that since the electrical-heating tobacco curing method is used, it would obviously prevent exhaust gases containing nitric oxide from coming in contact with the tobacco in the barn during curing because there is no burning of fuel involved in an electric heating process to even produce exhaust gases; therefore, the requirements of this claim are satisfied.

VII. Claims 2 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fowler (US. Pat. No. 4,206,554) in view of Bullock, Jr. (US. Pat. No. 5,018,281) and O'Donnell, Jr. et al (US. Pat. No. 5,803,081) as applied to claim 1 above, and further in view of Applicant's Admitted Prior Art.

Regarding claim 2, Applicant admits on page 2, lines 19-20, that typical direct-fire heating units are powered by propane. It would have been obvious to one having ordinary skill in the art at the time of the invention to have removed such a heating unit from the existing barn because these types of heaters are conventional in the tobacco art.

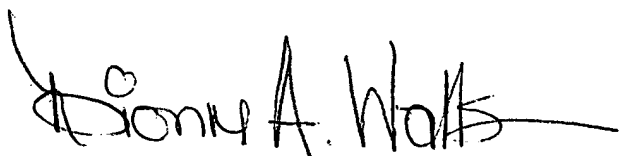
Regarding claim 6, Applicant admits on page 3, lines 13-19 of the instant specification, that "tobacco curing barns equipped with non-direct-fire heating units, such as heat exchange units" are known in the tobacco art. It would have been obvious to one having ordinary skill in the art at the time of the invention to equip the tobacco barn with a heat exchange unit for curing tobacco because this is well-known in the tobacco art.

Conclusion

VIII. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Dionne A. Walls whose telephone number is (703) 305 - 0933. The examiner can normally be reached Monday-Thursday from 6:30AM - 4:00PM (EST). The examiner can also be reached on alternate Fridays.


If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman, can be reached at (703) 308-3837.

Additionally, the fax number for this Group is (703) 305-7718.



Dionne A. Walls

02/19/02



JAMES DERRINGTON
PRIMARY EXAMINER
ART UNIT 137-1731